56 pp

SCANNED

MONTANA LEGISLATIVE HISTORY

Chapter 293 19 17

Bill H 571 S _____ Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
2/19	✓C	3/20	✓C
_____	___C	_____	___C
Date Out 2/20	✓C	out 3/27	✓

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

2/20	COMMITTEE REPORT—BILL PASSED		
2/21	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
2/24	2ND READING PASSED	94	5
2/26	3RD READING PASSED	88	12
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO STATE ADMINISTRATION		
3/20	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	50	0
4/05	3RD READING CONCURRED	49	1
	RETURNED TO HOUSE		
4/08	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 254		
	EFFECTIVE DATE: 04/14/97		

HB 570 INTRODUCED BY WAGNER, ET AL. *LC1367 DRAFTER: WILLIAMS*

SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE X, SECTION 11, OF THE MONTANA CONSTITUTION TO ENSURE THAT MONTANA RESIDENTS DO NOT NEED TO HAVE A STATE LICENSE OR TO PAY A STATE FEE FOR GENERAL RECREATIONAL USE OF STATE TRUST LANDS

2/15	INTRODUCED		
2/15	FIRST READING		
2/15	REFERRED TO FISH, WILDLIFE & PARKS		
2/18	HEARING		
2/18	TABLED IN COMMITTEE		
2/24	MOTION FAILED TO TAKE FROM COMMITTEE & PLACE ON 2ND READING	29	71
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL		
	DIED IN COMMITTEE		

HB 571 INTRODUCED BY BEAUDRY, ET AL. *LC1155 DRAFTER: MACMASTER*

PROVIDE FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO JUDICIARY		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	72	26
2/26	3RD READING PASSED	69	31
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/20	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED		
4/04	2ND READING CONCURRED	32	18
4/05	3RD READING CONCURRED	33	17
	RETURNED TO HOUSE		
4/08	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		

4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 293		
	EFFECTIVE DATE: 04/18/97		

HB 572 INTRODUCED BY ANDERSON, ET AL. *LC1156 DRAFTER: MACMASTER*

PROVIDE FOR SEVERAL LIABILITY FOR MOST TORT ACTIONS

2/17	INTRODUCED		
2/17	FIRST READING		
2/17	REFERRED TO JUDICIARY		
2/19	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	80	16
2/26	3RD READING PASSED	82	17
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/20	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	2ND READING CONCURRED	36	13
4/05	3RD READING CONCURRED	37	13
	RETURNED TO HOUSE WITH AMENDMENTS		
4/15	2ND READING AMENDMENTS CONCURRED	50	48
4/16	3RD READING CONCURRED AS AMENDED	61	38
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/21	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/21	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	89	4
4/21	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	73	26
	SENATE		
4/21	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	48	0
4/21	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	37	11
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 429		
	EFFECTIVE DATE: CONTINGENT UPON HOUSE BILL 571 BEING INVALIDATED OR FOUND TO BE UNCONSTITUTIONAL, THIS BILL WOULD BE EFFECTIVE ON THE DAY AFTER THE EFFECTIVE DATE OF THE INVALIDATION OR FINDING OF UNCONSTITUTIONALITY		

HB 573 INTRODUCED BY JORE *LC1376 DRAFTER: PETESCH*

REVISE THE LAWS GOVERNING THE DISSOLUTION OF MARRIAGE

2/17	INTRODUCED		
2/17	REFERRED TO HUMAN SERVICES & AGING		
2/17	FIRST READING		
2/19	HEARING		
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING DO PASS AS AMENDED MOTION FAILED	45	55

HOUSE BILL NO. 571

INTRODUCED BY Boucher, Clark, Hibbard, Kottel, Penny, Bergkamp, ORR, Wood, Slite, Hunter, Cash, Bishop, Gutsell, Estrada, McNutt, Holden

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

WHEREAS, the Legislature believes that the policy of the state is that claimants, defendants, and other potentially liable persons should be held responsible to the extent of individual fault; and

WHEREAS, the Legislature has retained joint and several liability, but modified it because of that policy; and

WHEREAS, the current system of modified joint and several liability must permit a consideration of the fault attributable to parties who settle or are released for the modified system to be operative; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not to sue does so because the claimant has made a considered judgment that the agreement is in the claimant's best interests; and

WHEREAS, the Legislature intends that the liability of persons who settle or are released and who may share in the responsibility for a tort cause of action be considered by the trier of fact and apportioned a percentage of damages according to their negligence; and

WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule, more accurately reflects the basis for comparative negligence, which apportions liability according to the

percentage of individual negligence.

THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the basis of individual negligence, encouraging fair settlements that accurately reflect potential liability, and permitting the allocation of a percentage of liability to persons who settle or are released and are found to be partially or wholly responsible.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Release -- covenant not to sue.** A release or covenant not to sue given to one of two or more persons liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides otherwise;

(2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of fault attributed by the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant is given;

(3) discharges the tortfeasor to whom it is given from all liability for contribution.

Section 2. Section 27-1-702, MCA, is amended to read:

"27-1-702. **Comparative negligence -- extent to which contributory negligence bars recovery in action for damages.** Contributory negligence ~~shall~~ does not bar recovery in an action by ~~any~~ a person or ~~his~~ the person's legal representative to recover damages for negligence resulting in death or injury to the person or property if ~~such~~ the contributory negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~ must be diminished in the proportion to the ~~amount~~ percentage of negligence attributable to the person recovering."

Section 3. Section 27-1-703, MCA, is amended to read:

"**27-1-703. Multiple defendants -- determination of liability.** (1) Except as provided in subsections

(2) and (3), ~~whenever~~ if the negligence of a party ~~in any~~ to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~ percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the ~~amount~~ percentage attributable to the claimant and to any person with whom the claimant has settled or who the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of ~~any~~ a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to~~ and persons with whom the claimant~~,~~ has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages of the claimant were caused in full or in part by a ~~nonparty, which may be referred to as a nonparty defense~~ person with whom the claimant has settled or who the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to the claimant, if a nonparty defense is properly asserted in accordance with this subsection (6)~~ or with whom the claimant has settled. A finding of negligence of a ~~nonparty~~ person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that ~~nonparty~~ person for purposes of a prior or subsequent action involving that ~~nonparty~~ person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

~~(c)~~(e) ~~The burden of proof as to a nonparty's liability is on the defendant or defendants who affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to the injury of the claimant or alter other proof requirements.~~ A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person who the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person who the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

~~(d)~~(f) A ~~nonparty defense must be~~ defendant alleging that a settled or released person is at fault in the matter shall affirmatively ~~pleaded as a part of~~ plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a ~~nonparty defense~~ settled or released person after

the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a ~~nonparty defense~~ settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

~~(ii)~~(iii) giving the claimant a reasonable opportunity to defend against ~~a nonparty~~ the defense~~; and~~

~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired~~.

~~(c)~~(g) If a defendant ~~asserts a nonparty defense~~ alleges that a settled or released person is at fault in the matter, the defendant shall notify each ~~nonparty~~ person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each ~~nonparty~~ settled or released person at the ~~nonparty's~~ person's last-known address by certified mail, return receipt requested."

NEW SECTION. **Section 4. Applicability.** [This act] applies to causes of action that arise on or after [the effective date of this act].

NEW SECTION. **Section 5. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-END-

HOUSE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0522	CLARK, ROBERT 2/11		REVISE LAW OF LIBEL AND SLANDER	VOTE:		
HB0528	WELLS, JACK 2/12	2/18	MONTANA FAMILY RIGHTS ACT	TABLED ON 02/20 VOTE: 15-5		
HB0540	ORR, SCOTT 2/13	2/18	GENERALLY REVISE LAWS REQUIRING CRIMINALS TO MAKE RESTITUTION	PASS AS AMENDED 02/20 VOTE: 19-0		2/21
HB0553	STOVALL, JAY 2/14	2/18	AWARD ATTORNEY FEES TO PREVAILING PARTY IN MOST CIVIL SUITS	PASS AS AMENDED 02/20 VOTE: 14-6		2/21
HB0571	BEAUDRY, HALEY 2/17	2/19	REVISE JOINT AND SEVERAL LIABILITY LAWS; COMPARATIVE NEGLIGENCE	DO PASS 02/20 VOTE: 13-7		2/20
HB0572	ANDERSON, SHIELL 2/17	2/19	REVISE JOINT AND SEVERAL LIABILITY LAWS; TORT ACTIONS	PASS AS AMENDED 02/20 VOTE: 15-5		2/21
HB0577	MOLNAR, BRAD 2/18	2/19	REVISE PERSON UNDER 21 AND IN POSSESSION OF ALCOHOL LAW	DO PASS 02/20 VOTE: 17-3		2/20
HJ0005	KITZENBERG, SAM 1/11	1/21	INTERIM STUDY OF THE FORENSIC SCIENCES DIVISION OF THE MT DEPT. OF JUSTICE	TABLED ON 01/24 VOTE: 20-0		
HJ0019	MERCER, JOHN 2/07	2/17	INTERIM STUDY ON CORRECTIONAL STANDARDS	PASS AS AMENDED 01/27 VOTE: 15-2		2/18
HJ0028	CURTISS, AUBYN 2/18	2/19	FEDERAL PEACE OFFICER COOPERATION WITH MONTANA SHERIFFS	PASS AS AMENDED 02/19 VOTE: 15-2		2/19
SB0016	HALLIGAN, MIKE 1/20	3/06	MANDATORY DISCLOSURE OF ASSETS & LIABILITIES IN DISSOLUTION/SEPARATION	CONCUR 03/16 VOTE: 14-3		3/07
SB0024	MCNUTT, WALTER 1/13	1/30	ADOPT LATEST VERSION OF UCMJ AND FEDERAL REGULATIONS	CONCUR 01/30 VOTE: 16-0		1/31

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 19, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted:	HB 571, HB 572, HB 577, HJ 28 POSTED 2/18/97
Executive Action:	HJ 28 DO PASS AS AMENDED
	HB 429 DO PASS AS AMENDED
	HB 416 TABLED
	HB 323 DO PASS

HEARING ON HB 571

Opening Statement by Sponsor: **REP. HALEY BEAUDRY**
{Tape: 1; Side: A; Approx. Time Count: 2.3; Comments: This set of minutes was recorded on 90-minute tapes.}

Proponents' Testimony:

CHRIS GALLUS, Montana Chamber of Commerce/Montana Liability Commission (MCC/MLC)
{Tape: 1; Side: A; Approx. Time Count: 7.6}

PAGE DRINGMAN, Montana Municipal Insurance Authority (MMIA)
{Tape: 1; Side: A; Approx. Time Count: 12.4}

ALEC HANSEN, League of Cities and Towns
{Tape: 1; Side: A; Approx. Time Count: 24.6; Comments: This witness did not sign in.}

GREG JACKSON, Montana Association of Counties (MAC)
{Tape: 1; Side: A; Approx. Time Count: 26.7}

CARL SCHWEITZER, Montana Contractors' Association (MCA)
{Tape: 1; Side: A; Approx. Time Count: 27.3}

JOHN KEMBEL, City of Billings
{Tape: 1; Side: A; Approx. Time Count: 27.7}

BARBARA RANF, U. S. West Communications (USWC)
{Tape: 1; Side: A; Approx. Time Count: 28.0}

Opponents' Testimony:

RUSSELL HILL, Montana Trial Lawyers Association (MTLA) EXHIBIT 1
{Tape: 1; Side: A; Approx. Time Count: 28.3-Tape 1; Side B; 2.2}

Questions From Committee Members and Responses:
{Tape: 1; Side: B; Approx. Time Count: 2.6 - 23.3}

Closing by Sponsor: REP. BEAUDRY
{Tape: 1; Side: B; Approx. Time Count: 23.4}

HEARING ON HB 572

Opening Statement by Sponsor: REP. SHIELL ANDERSON
{Tape: 1; Side: B; Approx. Time Count: 27.8}

Proponents' Testimony:

PAGE DRINGMAN, MMIA
{Tape: 1; Side: B; Approx. Time Count: 33.4}

CHRIS GALLUS, MCC/MLC
{Tape: 1; Side: B; Approx. Time Count: 40.0}

ALEC HANSEN, League of Cities and Towns
{Tape: 2; Side: A; Approx. Time Count: 0.5}

EXHIBIT 1
DATE 2/19/97
HB 571

Directors:
[illegible]ade Dahood
Director Emeritus
[illegible]izabeth A. Best
L. Randall Bishop
Michael D. Cok
Mark S. Connell
Michael W. Cotter
Patricia O. Cotter
Karl J. Englund
Victor R. Halverson, Jr.
Gene R. Jarussi
Micheal F. Lamb
Peter M. Meloy
James P. Molloy
John M. Morrison
Gregory S. Munro
David R. Paoli

Montana Trial Lawyers Association

Russell B. Hill, Executive Director
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Governor
David R. Paoli
Governor

February 19, 1997

Rep. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59624

RE: HB 571/HB 572

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to both HB 571 and HB 572, which reinstitute nonparty defenses that MTLA believes are:

(1) radical disincentives to negotiated settlement of lawsuits and therefore terrible public policy; and
(2) unconstitutional.

MTLA still believes--as it testified before the Senate Judiciary Committee in 1995--that proponents of so-called "tort reform" have failed to anticipate the interplay between nonparty defenses (such as those proposed this session by HB 571/HB 572) and a loser-pays scheme (such as HB 553 proposes this session). Whether it agreed with MTLA's testimony or not, the Senate Judiciary Committee in 1995 passed SB 212 by a vote of 8-3 and tabled SB 308 (a loser-pays bill virtually identical to this session's HB 553) by a vote of 9-2.

If I can provide additional information or assistance, including copies of MTLA's testimony or committee minutes from 1995, please contact me.

Respectfully,

Russell B. Hill
Executive Director

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 20, 1997, at 7:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Boharski was excused until 8:00 AM.

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Executive Action:
DO PASS:
HB 159, HB 299, HB 571, HB 577
DO PASS AS AMENDED:
HB 276, HB 303, HB 306, HB 453
HB 540, HB 553, HB 572
TABLED:
HB 270, HB 454, HB 528

Motion/Vote: **REP. MC GEE moved to table HB 528.** The motion carried 15 - 5; REPS. BOHARSKI, MOLNAR, CURTISS, BERGMAN and CLARK voting no.

EXHIBITS 5 and 6

{Comments: Exhibits 5 and 6 were distributed to the committee prior to executive action.}

EXECUTIVE ACTION ON HB 540

Motion: **REP. MC GEE moved HB 540 DO PASS.**
{Tape: 3; Side: A; Approx. Time Count: 39.4}

Discussion:
{Tape: 3; Side: A; Approx. Time Count: 40.4}

Motion/Vote: **REP. KOTTEL moved the amend HB 540 on lines 19 and 20 to strike words following "paid."** The motion carried 19 - 0. (REP. BERGMAN was not present for the vote.)

Motion: **REP. SANDS moved HB 540 DO PASS AS AMENDED.**
{Tape: 3; Side: A; Approx. Time Count: 42.6}

Motion: **REP. MOLNAR moved to amend HB 540.**

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 0.3}

Vote: The motion failed 2 - 17; REPS. MOLNAR and BOHARSKI voting aye.

Motion/Vote: **REP. MC GEE moved HB 540 DO PASS AS AMENDED.** The motion carried 19 - 0.

{Tape: 3; Side: B; Approx. Time Count: 4.0; Comments: REP. WYATT made a point of personal privilege regarding the order of the bills being considered.}

EXECUTIVE ACTION ON HB 577

Motion: **REP. MC GEE moved HB 577 DO PASS.**
{Tape: 3; Side: B; Approx. Time Count: 5.4}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 6.1}

Vote: The motion carried 17 - 3; REPS. GRIMES, ANDERSON and BOHARSKI voting no. (REP. KOTTEL voted aye by proxy.)

EXECUTIVE ACTION ON HB 571

Motion: **REP. ANDERSON moved HB 571 DO PASS.**
{Tape: 3; Side: B; Approx. Time Count: 8.9}

Motion/Vote: **REP. WYATT moved to amend HB 571.** **EXHIBIT 7**
The motion failed by voice vote.
{Tape: 3; Side: B; Approx. Time Count: 10.0-11.1; Comments: There was brief discussion for clarification before the vote.}

Vote: The motion carried to pass HB 571 13 - 7; REPS. WYATT, HURDLE, MC CULLOCH, PEASE, SANDS, ELLINGSON and KOTTEL voting no.
{Tape: 3; Side: B; Approx. Time Count: 11.5}

EXECUTIVE ACTION ON HB 572

Motion: **REP. ANDERSON moved HB 572 DO PASS.**
{Tape: 3; Side: B; Approx. Time Count: 12.6}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 13.1 - 15.7}

Motion: **REP. KOTTEL moved to amend HB 572 to include a non-severability clause.**
{Tape: 3; Side: B; Approx. Time Count: 15.8}

Vote: The motion carried 15 - 4; REPS. HANSON, ANDERSON, GRIMES and CLARK voting no. (REP. MC CULLOCH voted aye by proxy.)

Motion/Vote: **REP. ANDERSON moved HB 572 DO PASS AS AMENDED.** The motion carried 15 - 5; REPS. SANDS, WYATT, ELLINGSON, HURDLE and MC CULLOCH voting no. (REP. MC CULLOCH voted no and REP. TASH voted aye by proxy.)
{Tape: 3; Side: B; Approx. Time Count: 22.4}

EXECUTIVE ACTION ON HB 553

Motion: **REP. AHNER moved HB 553 DO PASS.**
{Tape: 3; Side: B; Approx. Time Count: 23.8}

Motion: **REP. ANDERSON moved to amend HB 553 by changing "must" to "may."**
{Tape: 3; Side: B; Approx. Time Count: 24.4}

Discussion:
{Tape: 3; Side: B; Approx. Time Count: 24.8 - 36.0}

Vote: The motion failed by tie roll call vote. **EXHIBIT 8**
(REP. SANDS voted no by proxy.)

Motion/Vote: **REP. MC GEE moved REP. STOVALL'S amendments to insert "in the trial or other initial proceeding and to the prevailing party in any appeal" on line 14, page 1.**
The motion carried 17 - 3; REPS. ELLINGSON, HURDLE, and BERGMAN voting no. (REP. BERGMAN voted no by proxy.)

Motion: **REP. MD GEE moved HB 553 DO PASS AS AMENDED.**
{Tape: 4; Side: A; Approx. Time Count: 1.7}

EXHIBIT 7
DATE 3/20/97
HB 571

Amendments to House Bill No. 571
First Reading Copy

Requested by Rep. Wyatt
For the Committee on the Judiciary

Prepared by John MacMaster
February 19, 1997

1. Page 2, lines 17 and 18.
Strike: ";" on line 17 through "contribution" on line 18

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0429	3/03	3/21		TABLED ON 03/21 VOTE:9-1		
HB0479	TUSS, CARLEY 2/20	3/13	ALLOW PERMANENT EXCLUSION FROM JURY DUTY FOR CHRONICALLY INCAPACITATED	CONCUR AS AMENDED VOTE:10-0	3-13	3/15
HB0495	MILLS, NORM 2/20	3/18	REVISE DISCRIMINATION EXCEPTION FOR OLDER PERSON HOUSING	CONCUR VOTE:10-0	3-18	3/19
HB0534	WELLS, JACK 3/04		MAKE STATE LIABLE FOR INTEREST/ATTORNEY FEES IN JUDGMENT INVOLVING CONTRACT	VOTE:	STATE ADMIN.	
HB0540	ORR, SCOTT 3/04	3/18	GENERALLY REVISE LAWS REQUIRING CRIMINALS TO MAKE RESTITUTION	CONCUR VOTE: 10-0	3-18	3/19
HB0553	STOVALL, JAY 3/04	3/21	AWARD ATTORNEY FEES TO PREVAILING PARTY IN MOST CIVIL SUITS	TABLED ON 03/26 VOTE:8-2		
HB0571	BEAUDRY, HALEY 3/04	3/20	REVISE JOINT AND SEVERAL LIABILITY LAWS; COMPARATIVE NEGLIGENCE	CONCUR VOTE:7-3	3-27	3/28
HB0572	ANDERSON, SHIELL 3/04	3/20	REVISE JOINT AND SEVERAL LIABILITY LAWS; TORT ACTIONS	CONCUR AS AMENDED VOTE:7-3	3-27	3/28
HB0577	MOLNAR, BRAD 3/04	3/14	REVISE PERSON UNDER 21 AND IN POSSESSION OF ALCOHOL LAW	CONCUR VOTE: 10-0	3-14	3/15
HJ0019	MERCER, JOHN 3/03	3/14	INTERIM STUDY ON CORRECTIONAL STANDARDS	CONCUR VOTE: 10-0	3-14	3/15
HJ0028	CURTISS, AUBYN 3/03	3/14	FEDERAL PEACE OFFICER COOPERATION WITH MONTANA SHERIFFS	CONCUR AS AMENDED VOTE: 7-3	3-14	3/17
SB0002	HOLDEN, RIC 12/27	1/07	REVISE, CLARIFY, AND CONSOLIDATE LAWS GOVERNING WORK PROGRAMS FOR INMATES	PASS AS AMENDED VOTE:	1-14	1/15
	CHRISTIAENS, CHRIS		CRIMINALIZE POSSESSION OF WEAPON BY PERSON IN YOUTH DETENTION FACILITY			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE CRIPPEN**, on March 20, 1997, at 9:07 A.M., in Senate Judiciary Room, Room 325.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 571, 3/4/97
HB 572, 3/4/97
HB 264, 3/4/97

Executive Action: None

HEARING ON HB 571

Sponsor: **REP. HALEY BEAUDRY, HD 35, Butte**

Proponents:

Chris Gallus, Montana Chamber of Commerce and Montana Liability Coalition
Page Dringman, Montana Municipal Insurance Authority
Alec Hanson, Montana League of Cities and Towns and MMIA
Carl Sweitzer, Montana Contractors Association
Brad Griffin, Montana Retail Association and the Montana Hardware and Implement Association
Jim Kimball, City of Billings

Greg Jackson, Montana Association of Counties
Barbara Ranf, U. S. West Communications
Russ Ritter, Washington Corporation
John Schontz, Montana Association Realtors

Opponents: **Robert Cameron, Attorney**
Russell Hill, MTLA

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 9:07}

REP. HALEY BEAUDRY, HD 35, Butte, introduced HB 571. This bill is an act to revise Montana's comparative negligence statute. House Bill 571 provides a fair means to divide damages among at least some of those who are responsible for someone else's injuries. House Bill 571 protects schools, local governments, businesses and other deep pockets defendants from assuming a disproportionate share of damages. This bill applies to settled and released parties only. It allows consideration of the liability of those settled or released parties and it provides additional safeguards for participants in the suit. It allows a more fair allocation of liability among the parties deemed to be at fault in an injury case.

Proponents' Testimony:

Chris Gallus, Montana Chamber of Commerce and Montana Liability Coalition, rose in support of HB 571. In 1987, Montana law provided for the "empty chair" non-party defense. That was where a defendant in an action could bring up the fault of a non-party. That was thrown out in 1994 in a case called Newville. It lacked procedural safeguards necessary to insure due process. In 1995 this legislature passed SB 212. That initiated those procedural safeguards and reinstated the non-party defense in Montana. In 1996 in a case called Plumb, SB 212 was thrown out as well. This bill allows the situation wherein the plaintiff has taken some considered and voluntary action, the remaining defendant is not the only one left in the lawsuit. **EXHIBIT 1**

Page Dringman, Montana Municipal Insurance Authority, stated the MMIA is the self-insurance entity for the cities and towns in the state. They have a number of cases which involve third party situations. In the last three years there have been approximately 87 claims filed against a city or town which involve a third-party situation. Currently, if three parties are involved in an accident and the plaintiff settles with one of those parties, that party can then not be a party to the lawsuit. The fault of that party cannot be considered. She explained her handouts, **EXHIBIT 2.** She presented the scenario where there are three parties involved in an automobile accident. Person A is the driver of vehicle no. 1, B is the passenger of that vehicle, and C is the driver of vehicle no. 2. Assume that there are the following percentages of liability for each person involved in

the lawsuit. Driver A is 70% at fault. Passenger B is 0 percent at fault and driver C is 30% at fault. Total damages are $100,000. Passenger B is the claimant and the two drivers of the vehicles are defendants. We are supposed to have a modified system of joint and several liability where parties that are 50% or less at fault, only pay their percentage of liability and parties that are greater than 50% at fault could be held liable for 100% of the damages. Example no. 1 addresses modified joint and several cases. All parties are involved in the lawsuit. Passenger B is 0% at fault. A is 70% at fault and will pay $70,000. C is 30% at fault and will pay $30,000. B recovers $100,000 which is the total amount of damages. C is less than 50% liable and that is all C can be held liable for. A is greater than 50% liable and could be held liable for 100% and then seek contribution from C.

The second part of that is modified joint and several after the recent Supreme Court decision in Plumb. B has settled with the driver for $10,000. The Supreme Court has said settlements are addressed by giving a dollar offset. In that case A has paid $10,000, the amount of settlement. C will have to pay $90,000 for 30% of the liability and B recovers 100%. C is the only defendant in the lawsuit and then is liable for 100% of the damages. C gets a dollar for dollar offset. The $100,000 is offset by the amount of settlement. Despite the fact that A was 70% liable, A only pays $10,000. Despite the fact that C is only 30% liable, C pays $90,000.

The third example shows the situation wherein the two parties in the vehicle are related, B releases A from liability. In that situation C will pay 100% of damages for 30% of the liability. The next page shows the dollar offset rule if B settles with A for $80,000. A is only 70% liable. B can then recover $20,000 from C, despite the fact that C is 30% liable. The dollar offset rule does not correlate liability or fault with the amount of money paid. All the dollar offset does is insure that a plaintiff recovers 100%. HB 571, in the case where B has settled with A for $10,000, states that C is the only defendant in the lawsuit but the judge or the jury can consider the percentage of liability attributable to A. B's total damages of $100,000 will be reduced by the liability of A. It will be reduced by 70% and C will have to pay $30,000. The dollar amount of the settlement has no effect on Cs liability. C pays in direct proportion to Cs liability. In this instance B would recover $40,000 which would be the $30,000 from C and $10,000 which is the amount of settlement from A. This does not allow a plaintiff to recover 100% but it does tie fault for an accident to financial responsibility.

Under HB 571, plaintiffs do have an opportunity to recover more than their damages. That is example 6. B settles with A for $80,000 and sues C. C is the only defendant in the lawsuit and is liable for 100% less the liability associated with A which is 70%. C will have to pay $30,000 for 30 percent of the liability.

Person B will recover $110,000 because Person C always has to pay their percent of liability.

When there is a settled or released party, the defendant will not have to pay the additional liability attributable to the settled or released party. The plaintiff has entered into a settlement voluntarily. They chose to settle with the party. They could have brought the party into the lawsuit and had the trier of fact allocate liability amongst all parties. It is not fair for the remaining defendant in the lawsuit to have to bear, in addition to their share of liability, any liability associated with a settled party.

Alec Hanson, Montana League of Cities and Towns and MMIA, rose in support of the bill. He stated that about 10 years ago they had four or five of the largest cities in Montana which couldn't buy liability insurance at any price. The MMIA premiums are paid by the taxpayers of the State of Montana. The city or town would be a deep-pocket defendant in many lawsuits. Public agencies need some protection. House Bill 571 allows the court or the jury to hear the full facts about the incident. If a person settles, that person's responsibility cannot be presented to the court or the jury.

Carl Sweitzer, Montana Contractors Association, stated that the full incident needs to be examined and the determination made as to who is at fault and the percentages involved.

Brad Griffin, Montana Retail Association and the Montana Hardware and Implement Association, rose in support of the bill.

Jim Kimball, City of Billings, rose in support of the bill.

Greg Jackson, Montana Association of Counties, rose in support of HB 571.

Barbara Ranf, U. S. West Communications, stated they are also a member of the Montana Liability Coalition, and are in support of the bill.

Russ Ritter, Washington Corporation, rose in support of the bill.

John Schontz, Montana Association Realtors, rose in support of the bill.

Opponents' Testimony:

{Tape: 1; Side: a; Approx. Time Count: 9:27}

Robert Cameron, Attorney, explained he represented the Plumbs in the Supreme Court case, Plumb v. District Court. The Supreme Court declared it unconstitutional, a violation of substantive due process, to adopt a system that involves the "empty chair". That is to apportion a percentage of fault or liability to

someone who is not there to defend himself. If you are an employer and you get phone calls from disgruntled customers, you would go into work the next day and ask that employee's side of things. If employee number 1 is pointing a finger at absent employee no. 2 and saying he is at fault, what would you do? You would hear from employee no. 2. House Bill 571 provides the opportunity to the remaining defendant to point the finger at the empty chair and say that he is at fault. House Bill 571 allows the settled-out party to come back into the lawsuit to defend themselves. That cures some of the problems. The Supreme Court also stated that it is unconstitutional for the remaining plaintiff in the case.
The dollar credit rule is a system whereby any settlement paid results in the remaining defendant's judgment being offset dollar for dollar. That amply protects the remaining defendant's interest. If the defendant has to come back to court to defend his name and reputation and incur tens of thousands of dollars in lawyers fees, what incentive does that defendant have to settle? With the plaintiff having the threat of the disproportionate share of liability being shuffled off onto the empty chair, it is a substantial disincentive for plaintiffs to settle. There is a strong public policy favoring anything that promotes settlement.

Russell Hill, MTLA, rose in opposition to HB 571. These bills are unconstitutional. The court did not only strike the language referring to non-settling, non-parties. They explicitly struck the language that included settling non-parties. If the proponents are interested in making sure that no one hides their percentage of liability behind a settlement, they can prohibit settlements. Everything rides on the settlement. Most of the time, settlements favor defendants. Plaintiffs do not dictate settlements. It is better to have parties voluntarily negotiate a settlement than to go into court. **EXHIBIT 3** In the Washington Legislature there is a proposal to allow the legislature to overrule Supreme Court decisions with which they disagree. He commented on **Dave Owen's** radio program. **EXHIBIT 4** It is terrible to discourage settlements for a narrow set of instances. This increases costs. Insurance companies will find it harder to settle a case and, even if they do settle for policy limits, they still have exposure. They have to defend. The non-party defendant under HB 571 has the right to come back into the case to intervene and defend its name. Page 1, line 17, states that whereas the legislature believes the policy of the state is that claimants should be held responsible to the extent of individual fault. Page 2, line 24 ignores the whereas clause. A claimant can recover absolutely nothing if they were 51% or more negligent. The House Judiciary Committee corrected that in HB 572 by adjusting the modified comparative negligence statute to a pure comparative negligence statute. **REP. BOHARSKI** drives a specially equipped van. He made a left turn in front of oncoming traffic. He was about 60% at fault. The oncoming car had plenty of time to stop. It was 40% at fault. **REP. BOHARSKI** was completely barred from collecting for his injuries because he was more than 51% at fault. On page 4, line 13, it states that a

release of settlement entered into by a claimant, constitutes an assumption of the liability, if any, allocated to the settled or released person. Does that mean that a plaintiff who is 25% at fault who settles with a defendant who is 26% at fault is thereby barred from all recovery? Has he assumed that liability?

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 9:47}

SEN. STEVE DOHERTY asked **Ms. Dringman** why he, as a lawyer who represents deep-pocketed defendants, would recommend to any of them that they ever settle any tort action again in which there are multiple defendants? If he settles, he will get paid to defend them. Why should he tell them to pay "x" amount instead of getting a release?

Ms. Dringman stated the bill encourages fair settlement. This provision is to give the defendant, the settled party, an opportunity to come back in and defendant themselves if they so choose. Under Plumb there was no opportunity for a non-party to come in and defend themselves. Language was specifically included to give a settled or released party the opportunity to defend themselves if they so chose. It is not mandatory.

SEN. DOHERTY asked **Mr. Cameron** why he would advise his client to settle a case in advance of trial? You have the opportunity to come in. You are not required to come in. As an attorney, would you ever recommend to your clients that they not defend at trial?

Mr. Cameron stated that he provides insurance defense. In a case in which a settlement in the range of policy limits would be appropriate, he could recommend to the insurance carrier to settle to avoid the potential of an excess liability problem which could arise under an insurance bad faith claim against the insurer. If the insurer declines an opportunity to settle a case for a reasonable amount when liability is reasonably clear, the insurance company can be held liable even if there is only a $100,000 liability policy. The only time he would recommend settling to an insurance carrier under the scenario created by HB 571, would be where the insurance carrier's liability is greatly in excess of policy limits. They could settle for something close to policy limits incur the additional costs of defending if the insured would require it.

SEN. DOHERTY asked **Mr. Cameron** why he would advise his client to enter into a settlement and to retain him to appear at trial?

Mr. Cameron stated that that seemed to be coming up in the Plumb decision. In that case, the non-party was a doctor. A physician's name and reputation is important. The purpose of continuing in the lawsuit for the benefit of a settled-out defendant would be to protect his name and reputation.

SEN. DOHERTY asked **Mr. Owen**, with the various contingencies on this bill, if it would be reasonable to rethink whether we should have a Supreme Court in the State of Montana?

Mr. Owen stated that the commentary says that we should have a Supreme Court. However, he feels it is fair for a group of people to disagree with a Supreme Court over these conclusions. The commentary clearly suggests that if this court continues to interpret this Constitution in this manner, it is fair that a group of people disagree.

SEN. MIKE HALLIGAN asked what the options would be?

Mr. Cameron stated that the most desirable option would be to recognize how effective the dollar credit rule has been in reducing the remaining deep pocket defendant's liability. Those settlements are arrived at very carefully after considering all the risks and potential liabilities.

SEN. HALLIGAN asked **Ms. Dringman** what options other states used in dealing with the empty chair issue?

Ms. Dringman answered that a number of states allow an allocation of liability to a non-party. Oregon limits the consideration of non-party fault to a settled or released party for the reason that the plaintiffs negotiated that that was in their best interest. They had an opportunity to bring them into the lawsuit and did not do so. It is fair to consider the liability of that settled party as opposed to a party that is immune from suit or is not subject to the jurisdiction of the court. A number of states eliminate joint and several all together. There is no underlying policy that a plaintiff is going to collect 100% of damages regardless of who they collect it from and regardless of the liability of the defendant they collect that money from. Other states retain a joint and several liability scheme which states that a defendant 1% liable can pay all damages. One state retains a pure contributory negligence standard which states that a plaintiff who is 1% at fault recovers nothing.

SEN. HOLDEN commented that on page 2, line 26, the bill states that you must take into consideration the percentage of the negligence.

Mr. Cameron explained that he did not mean to create the impression that the bill does not require consideration of percent of negligence of the empty chair. The bill requires a determination of a percentage of negligence to be attributable to people who have settled out of the lawsuit. If he needs to decide how much fault to apportion to more than one person, he had better hear from all the people being accused of being at fault if he is expected to come up with an accurate percentage of fault.

SEN. HOLDEN asked why plaintiffs agree to take early settlements and then pursue claims against other parties?

Mr. Cameron stated that goes on a case-by-case basis. He has never been involved in a case in which the primarily responsible person was let out of the lawsuit by paying a small amount to the plaintiff.

SEN. HOLDEN felt that a drunk driver with no insurance could be primarily responsible for the entire accident but another driver involved in the same accident is put on the hook because he has a liability policy.

Closing by Sponsor:

{Tape: 1; Side: b; Approx. Time Count: 10:04}

REP. BEAUDRY stated that in a small town there was an accident where a two year old was left in a car which was running. The person who pulled up next let her two-year-old out of the car. He was standing on the lawn of the school. The two-year-old in the car which was running, pulled the car into gear and pinned the boy against the wall. The parent of the severely injured boy, settled with the responsible party for the car which was left running. The settlement was $20,000. The injuries to the boy are in the millions. The school is going to pay the money based on it's responsibility. That money will come from the people in the community where the school is located. The school's lawyer will be able to deduct $20,000. If the school is 10% liable, under this law it would be responsible for 10% of a million dollar award. Today, the school is responsible for a million dollars minus the $20,000 which has already been paid. If the person in the empty chair wants to sit in the chair, he is welcome to do that but the amount of his settlement will not change no matter what the jury finds. If you are 20% responsible, you pay 20%.

HEARING ON HB 572

{Tape: 1; Side: b; Approx. Time Count: 10:10}

Sponsor: **REP. SHEILL ANDERSON, HD 25, Livingston**

Proponents:
Page Dringman, Montana Municipal Insurance Authority
Chris Gallus, Montana Chamber of Commerce and Montana Liability Coalition
Alec Hanson, League of Cities and the Montana Municipal Insurance Authority
Tom Harrison, Montana Society of CPAs
Dwight Easton, Farmers Insurance
Jim Kimball, City of Billings
Russ Ritter, Washington Corporations
John Schontz, Montana Association of Realtors

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 3/20/97
SB NO. HB571

House Bill 571

HB 571 An Act to Revise Montana's Comparative Negligence Statute to Address the Liability of Settled or Released Persons. HB 571:

(1) **Applies only** to situations where the plaintiff, through voluntary and considered judgment, makes a decision to **settle** with or **release** a person from liability;

(2) Requires that the **defendant affirmatively plead** the defense as part of the answer, or after gaining actual knowledge of a settled or released party within a reasonable time to avoid the situation where a plaintiff must prepare a last minute defense through no action of their own; and

(3) Requires that the **defendant has the burden of proof** in establishing:

(a) the fault of the person whom the plaintiff has settled with or released;

(b) any standard of care applicable to a settled or released party; and

(c) that the fault of the person whom the plaintiff has settled with or released was a contributing cause under the law applicable to the matter;

(4) **Gives the settled or released person an opportunity to intervene** in the action to defend their actions, through requiring notification by the defendant.

(5) **Does not apply** to situations where the plaintiff has not had sufficient opportunity to exercise this voluntary or considered judgment with regard to a person not present because that party is:

(a) immune from liability;

(b) not subject to the jurisdiction of the court; or

(c) never named as a party to the action;

HB 571 meets the concerns expressed by the Supreme Court because the Legislature:

(1) Sets forth a **reasonable and permissible objective** to allow the trier of fact to apportion liability to persons with whom the plaintiff has settled with or released following an affirmative plea by the defendant and **providing procedural due process safeguards for all persons** involved;

(2) Believes such an objective is permissible where the absence of responsible persons in the lawsuit is solely due to the **voluntary and considered judgment** of the plaintiff when entering into settlement with or releasing a party;

(3) Requires that the **defendant argue the assignment of damages or liability** to persons who settled with or are released by the plaintiff;

(4) Gives settled or released parties the **opportunity to present a defense**, participate in discovery, and cross examine witnesses; and

(5) Provides that the plaintiff's attorney is not required to argue the case of immune persons, parties not subject to court jurisdiction, or any other persons who have not settled or been released.

MMIA

MT Chamber

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3/20/97
BILL NO. HB571

HB 571

EXAMPLES

**For all scenarios, assume that three parties were involved in an automobile accident. A is the driver of Car #1, B is the passenger of Car #1, and C is the driver of Car #2. Assume also the following percentages of liability for each person involved in the lawsuit: Driver (A) is 70% at fault, passenger (B) is 0% at fault; and Driver C is 30% at fault. Total damages are $100,000. B is the claimant and A and C are defendants.

1. Modified Joint & Several Liability; all parties in lawsuit

B = 0%	B = $0
A = 70%	A = $70,000
C = 30%	C = $30,000
	B recovers $100,000

B (claimant) can recover $70,000 from A and $30,000 from C. C has less than 50% liability and is severally liable only. A bears greater than 50% share of the liability, so could be jointly and severally liable for the full amount.

2. Modified Joint & Several after Plumb; B settled with A for $10,000. Settlement credit is a dollar offset.

B = 0%	B = $0
A = 70%	A = $10,000 (amount of settlement)
C = 30%	C = $90,000 (after dollar offset)
	B recovers $100,000

C is the only defendant in the lawsuit and will be liable for 100% of damages. According to current law, C will receive a dollar for dollar offset of the settlement amount. Therefore, C's $100,000 obligation will be decreased by $10,000. Note, however, that C pays $90,000 for a 30% share of liability.

3. Modified Joint & Several after Plumb, but B releases A from liability (B is the sister of A).

B = 0%	B = $0
A = 70%	A = $0 (released--no settlement paid)
C = 30%	C = $100,000 (no settlement, so no offset)
	B recovers $100,000

C is the only defendant in the lawsuit and will be liable for 100% of the damages. C is liable for $100,000 and no offset is available because A was released from liability and given a covenant not to sue.

4. Joint & Several liability after Plumb; but B settles with A for $80,000.

B = 0%	B = $0
A = 70%	A = $80,000 (settlement amount)
C = 30%	C = $20,000 (after dollar offset)
	B recovers $100,000

C is the only defendant in the lawsuit and will be liable for 100% of damages, but will receive an offset equal to the dollar amount of the settlement. C pays $20,000 for 30% of the liability. **B does not reap the benefit of settling well, and C does not pay the full extent of his liability.**

HB 571

5. Same facts as Scenario #2, but under HB 571 and settlement credit is a percentage of total damages.

B = 0%	B = $0
A = 70%	A = $10,000 (amount of settlement)
C = 30%	C = $30,000 (after percentage offset)
	B recovers $40,000

C is the only defendant in the lawsuit, but the jury/judge can consider the percentage of liability attributable to A. Thus, B's total damages of $100,000 will be reduced by 70%, which represents the combined percentages of liability attributable to B and A. The amount of settlement has no effect on C's liability. C will still pay $30,000 which is equivalent to C's 30% share of liability. B will recover $30,000 from C plus the $10,000 from settlement with A.

** Under HB 571, this scenario would work the same using the released party example in Scenario #3, except B would recover only $30,000 from C.

6. Same facts as Scenario #4, B settles with A for $80,000; under HB 571.

B = 0%	B = $0
A = 70%	A = $80,000 (settlement amount)
C = 30%	C = $30,000 (percent credit rule)
	B recovers $110,000

C is the only defendant in the lawsuit and will be liable for 100% of the damages less the combined liability of B and A (70%). Thus, C will pay $30,000 for 30% of the liability. **B will recover $10,000 more than actual damages because B settled well.**

Prepared by Page Dringman for MMIA.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3/20/97
BILL NO. HB 571

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William A. Rossbach
Governor
David R. Paoli
Governor

March 20, 1997

Sen. Bruce Crippen, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59624

RE: House Bill 571/House Bill 572

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to both HB 571 and HB 572, which reinstitute nonparty defenses that MTLA believes are:

(1) unconstitutional; and

(2) terrible disincentives to voluntary, negotiated settlement of lawsuits and terrible public policy.

HB 571 and HB 572 are unconstitutional. Neither bill cures the constitutional defect identified in both *Newville* and *Plumb* when plaintiffs were required to present not only their own cases but also the cases of nonparty defendants. As the Montana Supreme Court emphasized in *Plumb*:

> "As noted in *Newville*, 267 Mont. at 252, 883 P.2d at 802, 'there is no reasonable basis for requiring plaintiffs to examine jury instructions, marshal evidence, make objections, argue the case, and examine witnesses from the standpoint of unrepresented parties,' and requiring the plaintiff's attorney to serve in such a dual capacity is actually antithetical to his or her primary obligation, which is to represent the plaintiff by proving the plaintiff's case."

Essentially, proponents of both HB 571 and HB 572 ask this Legislature--again, but now twice at once--to presume that the Montana Supreme Court made a mistake in reviewing previous nonparty legislation. In *Newville*, for example, the Montana Supreme Court "struck from that part of Sec. 27-1-703(4), MCA (1987), the language which allowed assignment of liability to *'persons released from liability by the claimant'* as well as all other nonparty defendants. Likewise, in *Plumb* the Montana Supreme Court expressly

included "persons released from liability by the claimant" among:

> "the offending portions of Sec. 27-1-703, MCA (1995) [which] violate the right of substantive due process guaranteed to Roberta and Martin Plumb and Dr. Timothy Adams by the Fourteenth Amendment to the United States Constitution and Article II, Section 17, of the Montana Constitution."

To be blunt: MTLA believes that the corporations, insurance companies, and other "deep pocket" proponents of HB 571 and HB 572 know that both HB 571 and HB 572 are unconstitutional and want to force the Montana Supreme Court to invalidate both in order to precipitate a constitutional confrontation. That's why both bills contain nonseverability clauses. That's why HB 572 contains a bizarre contingent effective date which extends years, even decades into the future--long after subsequent Montana Legislatures have come and gone. And that's why the Montana Chamber of Commerce last week publicly challenged the authority of the Montana Supreme Court and threatened a constitutional amendment (see accompanying transcript).

Even if they were constitutional, HB 571 and HB 572 will profoundly discourage all voluntary settlements. Defendants as well as plaintiffs benefit when voluntary, negotiated settlements end litigation. But HB 571 and HB 572 will:

- Make it harder for defendants as well as plaintiffs to voluntarily negotiate settlements. It takes two to tango, and hobbling one hobbles both.
- Increase the burden on Montana courts by discouraging voluntary, negotiated settlements among parties.
- Increase costs to all parties, including insurance premiums. Even when they offer to settle a clear liability claim against their insureds for policy limits, for instance, insurance companies will find plaintiffs reluctant to settle; and even when they do settle a claim for policy limits, insurance companies will still face exposure to the continuing risk of having to defend their nonparty insureds.

Finally, MTLA still believes--as it testified before the Senate Judiciary Committee in 1995--that proponents of so-called "tort reform" have failed to account for the potential interplay between nonparty defenses (such as those proposed this session by HB 571 and HB 572) and a loser-pays scheme (such as HB 553 proposes this session). Whether it agreed with MTLA's testimony or not, the Senate Judiciary Committee in 1995 passed its ill-fated nonparty bill (SB 212) by a vote of 8-3 and tabled SB 308 (a loser-pays bill virtually identical to this session's HB 553) by a vote of 9-2.

If I can provide additional information or assistance, please contact me.

Respectfully,

Russell B. Hill, Executive Director

Opinions

Opinion Page Editor:
Bill Skidmore 447-4085

Helena Independent Record

Liability ruling right, again

An IR view

A long-standing reality in the practice of law is that lawsuits are more likely to be filed against those defendants who have the deepest pockets.

It's a common sense notion — why not go for the big bucks? — but it is loudly decried by large corporations and others who contend it often is patently unfair.

Seldom is one defendant solely responsible for a plaintiff's injury. In a car accident, for instance, possible defendants could include the other diver, the auto manufacturer, the mechanic who last worked on the car, the agency responsible for road maintenance, and so on. Why should a single party that happened to be named in the lawsuit be liable for damages when other parties not in the lawsuit might also share responsibility?

In response to such complaints, the Legislature has repeatedly tried to let defendants claim that liability should be apportioned among others, even if they aren't named in the lawsuit. Each time, in 1979, 1986, and 1994, the state Supreme Court shot down the law.

The Legislature's latest attempt to revise the law came in 1995. Last week, the high court shot that down, too. And, as was the case in the earlier decisions, the court was right to do so.

In the earlier rulings, the court held that it was unconstitutional for a judge to apportion liability to a third party not named in the case — unfair to the plaintiff who might therefore get a smaller settlement, and certainly unfair to the third party who had no chance to defend himself and his reputation.

The 1995 Legislature changed the law to put the burden of proving the non party's liability on the defendant and to require that the non party be notified that he or she is being blamed.

In the case decided last week, involving a woman who sued the Southgate Mall in Missoula after she slipped on a wet floor and badly injured her leg, part of the mall's defense (based on the newly revised law) was that the woman's doctor also was responsible for her condition.

The justices, finding that new revisions still were unconstitutional, threw out the defense.

They said, correctly, that despite the revisions, a third party still lacked the opportunity to actually appear in court and defend itself. They also noted that the defendant in such a case has another option: it can join to the case anyone it feels to share responsibility as a third-party defendant. When that is done, wrote Justice Terry Trieweiler, "any apportionment of liability to that third party is much more likely to bear some relationship to reality."

The Legislature has a legitimate interest in trying to ensure that no party to a lawsuit should have to bear a disproportionate amount of damages simply because it has the most money. But the Supreme Court is correct to insist that legislators do it right.

November 29, 1996

37

Bill would allow Legislature to ignore court verdicts

OLYMPIA (AP) — Rep. Kathy Lambert doesn't think it's fair that the state Supreme Court gets to decide if laws passed by the Washington Legislature are constitutional.

So the Woodinville Republican and fifth-grade teacher is pushing a measure that would let the Legislature, by a simple majority, ignore Supreme Court decisions and force the executive branch to carry out the Legislature's laws despite high court opinions.

The proposal to greatly change the "balance of power" doctrine among the three branches of government is given little chance of passage. But it has astonished some of Lambert's colleagues.

"I'm absolutely dumbfounded," said Rep. Pat Lantz, a Gig Harbor Democrat who sits with Lambert on the House Law and Justice Committee. Lantz, a lawyer, said "It was so astounding to me that it sent me back to my law school constitutional law textbook. It is settled law. The system has worked for 200 years."

But Lambert, and 33 GOP House co-sponsors, think it is a good idea given the fact that when the high court sees fit to declare new laws unconstitutional, lawmakers can only snarl or rewrite the law to comply with the decision.

Exhibit # 4 HB 571
Cassette Tape - Dave Owens Radio Show
The full exhibit is available from:
MT Historical Society Archives
225 North Roberts
P.O. Box 201201
Helena, MT 59620-1201
Phone # (406)444-4774

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/20/97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

DATE 3/20/97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 264, HB 572, HB 571

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Tom Jen	MAHSY	HB 264		✓
W. James Kembel	City of Billings	HB 571, 572	✓	
ROBERT CAMERON		HB 571, 572		✓
Barbara Ranf	USWest Communicah	HB 571, 572	✓	
David Gates	School Dist #7	HB 264		✓
Craig T. Anderson	Youth Court Prob	HB 264		✓
Allen C. Horsfall Jr.	Mt Mb. Reg Juv Det	HB 264		✓
Greg Jackson	MACO/SIA	HB 571 572	✓	
Bob Runkel	OPI	HB 264		✓
MARY ALICE COOK	Advocate for Children + Families	HB 264		✓
Carl Schweitzer	MT Contractors Assn	HB 571 HB 572	✓	
Dwight Easton	Farmers Ins Group	HB 572		✓
Russ Ritter	Wash Corp	HB 571/572	✓	
John Shontz	MT ASSOC REALTORS	571/572	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 3-20-97

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 571, 572
HB 264

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Dwight Easton	Farmers Ins	HB 571	✓	
Ben Havdahl	MT Motor Carriers Assn	HB572 HB571	✓ ✓	
Brad Griffin	MT Hardware + Implement MT Retail Assoc	H 5571 HB572	✓ ✓	
Al McMilin	Laurel Schools	HB264	✓	
John Sullivan	MT Defense Trial Lawyers	HB 572		✓ Amendment to Section 4
Eric Dewey	MEA	HB264		✓
Jacqueline Lenmark	Am. Ins. Assn	HB 572		✓ unless amde
Chris Gallus	MT Liability Co. MT CHAMBER	HB 571 + HB572	✓	
Don Allen	Mt. Wood Products Assn	HB571 HB572	✓	
Darrell Ocean	MT Chamber	571+572	✓	
Judith B Herzog	Citizen	264	WITHDRAW	✓
Sally K Stansberry	Citizen, employee of missoula Youth Homes	264		✓
Russell B. Hill	MT Trial Lawyers	HB 571 HB 572		✓
NATE SCHWEBER	YOUTH OF AMERICA!	HB264		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 27, 1997, at 10:00 a.m., in the Senate Judiciary Chambers of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: None
Executive Action: HB 100, HB 264, HB 306, HB 571, HB 572

EXECUTIVE ACTION ON HB 100

Amendments: hb010004.asf **(EXHIBIT #1)**

Motion/Vote: **VICE CHAIRMAN LORENTS GROSFIELD MOVED THAT THE COMMITTEE RECONSIDER ITS ACTION TO STRIP hb010003.asf FROM THE BILL YESTERDAY. THE MOTION CARRIED UNANIMOUSLY.**

Discussion: **Valencia Lane**. Yesterday the Committee adopted hb010003.asf. Today we are looking at hb010004.asf. In the hb010003.asf amendments, stated approved public and private treatment facilities were moved to supervisory lease. There was the change in (4) (a), and subsection (d) clarified following

youth court it must share information with schools who don't participate on youth placement teams.

{Tape: 1; Side: A; Approx. Time Count: #25.6; Comments: 10:38 a.m.}

SEN. HALLIGAN. Can you address **SEN. HOLDEN**'s issues to make sure we are not including nuisance information, but viable information as an exception to the disclosure provision? **Susan Fox.** I believe this was covered by the Study Commission and by OPI (Office of Public Instruction) language in SB 48. Specific direction to share with youth courts is missing in SB 48. This does talk about youth-admitted violations or convictions of violations.

SEN. HALLIGAN. I would oppose these amendments as we are holding the Free Conference Committee on SB 48 today.

Vote: **SEN. HOLDEN'S MOTION TO ADOPT HIS AMENDMENTS CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS HALLIGAN AND DOHERTY WHO VOTED NO.**

Motion/Vote: **SEN. HOLDEN MOVED THAT HB 264 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN.S HALLIGAN, BARTLETT, AND DOHERTY WHO VOTED NO. SEN. HOLDEN WILL CARRY HB 264.**

{Tape: 1; Side: A; Approx. Time Count: #32.0; Comments: 10:45 a.m.}

EXECUTIVE ACTION ON HB 571

Letter from Robert Cameron, attorney with Morgan, Cameron & Weaver, P.C. (EXHIBIT #3).

Statement from Montana Chamber of Commerce (EXHIBIT #4).

Discussion: **Valencia Lane.** HB 572 is a back-up to HB 571, if HB 571 is declared unconstitutional, but I believe you should discount the effective contingency date. Last session the Legislature passed SB 212 which amended the same section of law as HB 571 and HB 572 concerning comparative negligence and defense tort action. It is called the empty chair defense concerning negligence or liability of another party not called into the case. So, the Legislature specifically put the empty chair defense back into the Code to allow a defendant in a case to bring in evidence of liability or fault of someone not brought into a case.

In the Plumb decision, the Montana Supreme Court ruled this unconstitutional, as a violation of substantive due process. So HB 571 attempts to re-institute the empty chair defense, but more narrowly than in the 1995 session. It is limited to a settled or

released defendant only. It also changes the dollar credit rule to a percent credit rule.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None}

CHAIRMAN BRUCE CRIPPEN. HB 571 or HB 572 don't stand on each other. I'd rather deal with HB 571 first and then go on to HB 572 later this morning.

SEN. BARTLETT. Were will things stand if we do nothing?
Valencia Lane. It would require a discussion of comparative negligence and of joint and several liability. In HB 571 it amends both 27-1-702 and 703, MCA. Section 702 is the comparative negligence law that says you will compare the fault of all parties and if the plaintiff is not 51 percent or more liable for his own injury he is allowed to recover, if not, he's not allowed to recover against other parties - this is the modified Montana comparative negligence law. I don't believe the current law in 702 was affected by the Plumb decision, which means we still have the 50 percent rule in effect.

Section 27-1-703, MCA, is the joint and several liability section in the bill, and addresses allocation of liability of all parties so all defendants are liable in some way. If its more than 50 percent, they can be held liable jointly, if less than 50 percent, they can be held liable severally, and I don't believe these are affected by the Plumb decision.

{Tape: 1; Side: B; Approx. Time Count: #2.0; Comments: 10:56 a.m.}

The Plumb decision only refers to the allocation of liability once the plaintiff gets the judgment. In the lawsuit, the Plumb decision would strike down that part of the law that says the defendant can bring in evidence of anyone who is at fault in the case even though they are not a party in the action. With the Plumb decision ruling that unconstitutional, they now cannot do that, so essentially, you still have modified comparative negligence, you have joint and several liability, but the defendant cannot bring in that evidence of fault of people who are not named defendants in the case.

CHAIRMAN CRIPPEN. I will allow one person from each side to get up an make a brief, simple statement on HB 571. Since 1981 we have been doing joint and several liability, and it is a confusing, onerous, and frustrating process.

Stan Kaleczyk. The cities and towns have a self-insurance program. Recently there was a lawsuit in Montana community where policed chased an under-age drunk driver, who then hit an innocent driver and severely injury them. The injured person sued the police, the minor, the parents, and the bar who served the minor. The minor had no insurance, the parents had very little, and the bar had gone out of business. The Court said, as

long as the plaintiff didn't settle with anyone, the jury would be able to consider the relative fault of the municipality, the driver, the parent, and the bar owner. If the plaintiff settled with them under the post-Plumb decision, the jury would not be able to consider negligence of any party the plaintiff settled with, and the only negligence that would be in front of the Court would the negligence of the municipality. If we assume that everyone were in the courtroom and the jury deemed 40 percent negligence, they'd pay 40 percent of the damages. If the plaintiff settled with each of the other three potential defendants, then the only part left for the jury to consider the negligence would be the municipality, and the municipality would be liable for 100 percent of the damages suffered by the innocent plaintiff, less the dollar amounts of the settlement which could be, theoretically $5000 each.

HB 571 says it's okay if the plaintiff settles with the minor, the bar, and the parent, but the jury will still be able to consider their role in the accident. If the jury then considers these roles and determines the municipality is 40 percent reliable, they would only have to pay that percent. That is the difference between the existing law, post Plumb, and what HB 571 attempts to do.

In the Plumb decision, Justice Trieweiler, writing for a unanimous court, said where you can third party someone in, that is to say the plaintiff decides to sue only the municipality, the municipality could institute a third-party lawsuit and bring in the minor and these other people. But Justice Trieweiler says he's not sure the third-party practice rules would not be applicable if, before the lawsuit is filed, the plaintiff settled with the driver, the bar owner, and the parent. So the defendant who's left in the case can't bring them in and maybe under those circumstances substance of due process does or does not apply, so it leaves an open issue which HB 571 addresses.

Russell Hill. Stan Kaleczyc gave a good explanation. HB 571 attempts to deal with Plumb by limiting definitions of non-party. It's a good faith, ingenious attempt. The consequence of going to the percent credit rule will make it possible for a plaintiff to accrue more than 100 percent of their damages. The main reason the plaintiff settles is because people have policy limits.

In terms of limiting the non-party defendant to only settling parties, we think this is unconstitutional. Newville started all this and involved a settling party, it doesn't seem a valid reason to us. Twice, the Montana Supreme Court struck out settling parties, and settlement is voluntary, but under HB 571 the defendant still gets to walk away with no more consequences. To be constitutional you can't treat the settling plaintiff and defendant so differently.

HB 571 doesn't answer the question of what if the defendant wants to intervene - giving two people the right to mount that case and running the risk of sandbagging the defense.

CHAIRMAN CRIPPEN. These statements should clarify the issues for the Committee.

Motion: **SEN. HOLDEN MOVED THAT HB 571 BE CONCURRED IN.**

Discussion: **SEN. HALLIGAN.** I don't agree with the motion. We don't know if this is constitutional, so my support of HB 571 is conditional on HB 572 not going anywhere.

SEN. DOHERTY. The central teaching of Plumb is it's unconstitutional and violates basic fairness of those not there to defend themselves. I believe the bill reduces incentives to settle early, and I see no advantage for the defendant to settle early. I believe that is a danger in the bill, and that' s not good public policy.

I've have been trying to figure out why the non-severability clause is in the bill. It's ingenious, but if we adopt HB 571 with the non-severability clause and it's declared unconstitutional, the whole thing may be declared unconstitutional because it's non-severable. Stan Kaleczyk was exactly right. Plumb was a slip and fall case, suing the South Gate Mall in Missoula. Her injuries were real, but the Mall tried to allege medical malpractice of the plaintiff's doctors. I believe this bill still allows for the empty chair defense, and that is unconstitutional. My cases are three for three since last session.

{Tape: 1; Side: B; Approx. Time Count: #22.0; Comments: None}

I am also bothered by when Franklin Delano Roosevelt tried to pack the U.S. Supreme Court to change the law. That was very wrong. When the Anaconda Copper Company threatened Montana in the 1920s with a shutdown to get rid of an unfavorable judge, that was bad. This is raw, naked power and aggression to the Montana Supreme Court, and this is offensive and I believe we'd be setting up that Court.

VICE CHAIRMAN GROSFIELD. It violates basic fairness to apportion as much as 100 percent of liability to anyone not anywhere near that liability. But we don't know if this is unconstitutional, and if its declared unconstitutional we need to try again. This is an innovative approach, and I support it.

SEN. HOLDEN. I believe common sense needs to apply.

Vote: **SEN. HOLDEN'S MOTION THAT HB 571 BE CONCURRED IN CARRIED 7-3 IN A ROLL CALL VOTE.**

{Tape: 1; Side: B; Approx. Time Count: #28.4; Comments: 11:22 a.m.}

EXECUTIVE ACTION ON HB 572

Discussion: **Valencia Lane**. This does two things. It abolishes joint and several liability, and requires apportionment of fault to everyone whether they are made a party to a case or not, i.e., a pure comparative negligence law, and it allows the defendant to bring in the question of apportionment of fault whether immune, settled, or released from the case. It preserves three exceptions to joint and several liability.

{Tape: 1; Side: B; Approx. Time Count: #32.5; Comments: None}

Page Dringman. This had a diverse reading from both the public and the legislature concerning joint and several liability. The key difference is switching to 0-100 percent liability.

Russell Hill. There is a big difference between current law and centuries of tradition in Montana and elsewhere, and what this bill does. Orphan share means someone can't pay their share. If we're going to pure comparative fault, everyone only deals in dollars only to the level of their fault.

HB 572 doesn't attempt to conform to the Montana Supreme Court decision, and I believe the Committee needs to discuss the contingency date.

My understanding of the non-severability clause is that if any part is unconstitutional, it doesn't go back to pre-bill language, but leaves holes in the law.

CHAIRMAN CRIPPEN. The only way to get a law off the books is to repeal it, but it could be unenforceable.

Jacqueline Lenmark. We do oppose the pure comparative negligence amendment, and did favor HB 572 over HB 571 with that amendment removed.

{Tape: 2; Side: A; Approx. Time Count: #2.8; Comments: 11:33 a.m.}

Valencia Lane. On page 1, line 9-10, comparative negligence allows the plaintiff to still sue for up to the remaining one percent of liability. Without this, it would eliminate joint liability (currently, 51 percent or more responsible), making each party responsible for 100 percent of the plaintiff's recovery, leaving a several liability rule under which each party is responsible for their own percent of liability.

{Tape: 2; Side: A; Approx. Time Count: #4.5; Comments: 11:34 a.m.}

HB571
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 3/27/97
SB HB571+572

MORGAN, CAMERON & WEAVER, P.C.
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GREGORY O. MORGAN
NBTA CERTIFIED TRIAL ADVOCATE
ROBERT CAMERON
DAVID L. WEAVER

March 20, 1997

Members of the Senate Judiciary Committee:

I am a Bozeman attorney. I represented Roberta and Martin Plumb in Plumb v. District Court, the Supreme Court case in which the "nonparty defense" or "empty chair defense" was declared unconstitutional.

There are two major reasons why HB 571 and HB 572 should not pass. First, these bills will inevitably be declared unconstitutional under the Plumb rule because they require apportionment of percentages of fault to person not parties to the case. Second, HB 571 and HB 572 represent bad public policy, by creating a substantial impediment to compromise settlement of lawsuits.

1. HB 571 AND HB 572 VIOLATE CONSTITUTIONAL PRINCIPLES OF SUBSTANTIVE DUE PROCESS.

Under the Montana Supreme Court's decisions in Newville v. State Dept. of Family Services and Plumb v. District Court, it is unconstitutional to apportion a specific percentage of liability to a person not a party to the lawsuit.

As the Montana Supreme Court pointed out in Newville, the danger created by the nonparty defense is an artificially inflated apportionment of negligence attributed to the nonparty defendant.

> No attorney represented [the nonparty defendant's] interests at trial and as a result, it is possible that the application of percentage of negligence was higher than would have been appropriate had the facts as to her case been presented by her own counsel.

Newville, 267 Mont. at 254.

The principle on which Plumb was decided is not complex. A jury cannot be expected to accurately assign a percentage of

blame to persons not there to defend themselves. Our system of justice can properly function only when opposing parties are present before the court, making their respective arguments, and each side vigorously advocating its own position. The trier of fact can render a just decision because it has heard from all sides. The whole process falls apart where the trier of fact attempts to assign a percentage of negligence to a person not participating in the case.

It is true that HB 571 gives settled or released persons an "opportunity" to intervene in the action to defend against the named defendant's charge. This does not, however, cure the constitutional defect identified in Plumb. In Plumb, the Court concluded that apportionment of a percentage of liability to a nonparty violates the constitutional rights of **both** the nonparty and the claimant. Providing the settled nonparty the right to intervene might arguably cure the constitutional defect with respect to the settled nonparty. But in those instances in which the settled nonparty elects **not** to intervene, then the claimant's constitutional rights are violated every bit as much as under the scheme declared unconstitutional in Plumb.

The Court in Plumb gave 4 reasons why it is unconstitutional to apportion a specific percentage of negligence to person not there to defend themselves:

1. Liability would be assigned to a nonparty without affording him the opportunity to defend himself. The percentage of liability assigned to the nonparty would not be a reliable or accurate apportionment.

2. The claimant's right to recover a fair measure of damages is jeopardized by the potentially disproportionate assignment of liability to a nonparty who had no opportunity to appear and defend himself.

3. It is unconstitutional to put the burden on the plaintiff's attorney to serve in a dual capacity, representing both the plaintiff and the nonparty.

4. Other procedural mechanisms exist for bringing nonparties into the lawsuit through third-party practice (not applicable to settled defendants)

HB 571 gives settled persons the "opportunity" to intervene in

the action, thereby addressing Number 1 above. However, the constitutional problems enumerated in Numbers 2 and 3 above are not cured by HB 571, because the settled nonparty may elect not to appear and defend.

In summary, enactment of HB 571 and 572 would be an unconstitutional deprivation of claimants' right to substantive due process of law, because both bills contain provisions for the trier of fact to apportion a percentage of fault to persons not there to defend themselves.

2. HB 571 AND HB 572 REPRESENT BAD PUBLIC POLICY, BY CREATING A SUBSTANTIAL IMPEDIMENT TO COMPROMISE SETTLEMENT OF LAWSUITS.

HB 571 provides in part that

> a release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

The dockets of our district courts are becoming more and more crowded every day. The burdens on the resources of our courts are likewise increasing. The last thing Montana needs is a law that will dramatically reduce settlement of negligence cases.

Compromise settlements are strongly favored in the law for two reasons: (1) settlements "relieve the labors of the courts, and avoid expense," and (2) "where the parties agree between themselves upon a settlement of the claim, the result reached is frequently a more equitable adjustment than is possible to be had in a court of law." Black v. Martin, 88 Mont. 256, 292 P. 577 (1930).

Advocates of HB 571 and 572 are apparently concerned about potential unfairness where one defendant settles out of a lawsuit. Such concerns are not valid. The "Dollar Credit" Rule amply protects the interests of those non-settling defendants. Although a non-settling defendant cannot sue settled defendants for contribution, it has long been the rule in Montana that "the

claim of the plaintiff against the remaining tortfeasors is to be reduced by a dollar credit in the amount of consideration paid by the settling tortfeasor." Deere v. District Court, 224 Mont. 384, 730 P.2d 396 (1986).

Under HB 571 and 572, Plaintiffs will be extremely reluctant to settle, because if they do, they will have to anticipate putting on a full-blown defense case on behalf of the settled nonparty. And this is precisely what the Supreme Court in Plumb identified as unconstitutional: forcing plaintiff's to put on a full-blown defense case on behalf of a person not a party to the action.

Additionally, defendants will be more reluctant to settle, knowing that they will become the "empty chair" target of the remaining defendant. Under HB 571, they would have the option of hiring an attorney at considerable expense and participating at trial, but if they are forced to go through all that much trouble to protect their name and reputation, they have very little incentive to settle.

HB 571 and HB 572 are clearly unconstitutional, and are bad public policy for the people of Montana. I urge the committee to reject passage of these bills.

Respectfully submitted,

Robert Cameron

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/27/97
BILL NO. HB 571 & 572

House Bill 572

* House Bill 572 repeals joint and several liability for most tort causes of action and replaces the joint and several liability scheme with **several** liability only.

* HB 572 takes effect on passage, if HB 571 is not passed and approved. However, if both HB 571 and 572 are passed and approved, HB 572 does not take effect unless HB 571 is struck down.

* HB 572 represents a **fundamental** change in our liability system but is necessary if the doctrine of modified joint and several liability is rendered meaningless by court decisions. Therefore, if it is impossible under a modified joint and several liability scheme to allocate liability to parties who caused the accident but are not parties to the suit, the state of Montana needs a liability scheme that allocates liability on the basis of fault.

* HB 572 declares that it is the policy of the state of Montana that **each person be held responsible only to the extent of his or her individual fault.**

* HB 572 would permit the trier of fact to consider the fault of all parties to an **occurrence** for the purpose of determining the fault of any party to the **action.** For example, a car accident involves three persons, the driver and passenger in Vehicle #1 and the driver of Vehicle #2. The passenger is injured through the negligence of both drivers. However, the passenger is related to the driver of Vehicle #1 and releases Driver #1 from liability. Passenger then sues the driver of Vehicle #2. The Driver #2 may produce evidence of the fault of Driver #1 and a jury or judge may determine that, based on evidence introduced by Driver #2, Driver #2 is only 20% liable for the accident. The jury can allocate only this 20% to Driver #2 and the plaintiff is entitled to recover only the dollar equivalent of that 20% share of liability.

* HB 572 allows a comparison of fault for tort actions alleging negligence or gross negligence, as well as to tort causes of action for products liability and strict liability.

* HB 572 allows a comparison of fault with all parties to an occurrence, including immune parties, settled or released parties, and parties not subject to the jurisdiction of the court.

* HB 572 specifically **retains joints and several** liability for 3 situations:

(1) one person acting as the agent of another;
(2) two persons acting in concert; and
(3) violations of state environmental law.

* HB 572 **does not affect** joint and several liability in other causes of action, such as joint and several liability for business entities, corporate liability, negotiable instruments, indemnification agreements, or breach of contract.

MMIA
MT Chamber

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-27-97

NAME	PRESENT	ABSENT	EXCUSED
SUE BARTLETT	✓		
AL BISHOP	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
WALT MC NUTT	✓		
LORENTS GROSFIELD, VICE CHAIRMAN	✓		
BRUCE CRIPPEN, CHAIRMAN	✓		

SEN:1995
wp.rollcall.man
CS-09

MONTANA SENATE
1997 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3/27/97 BILL NO. HB 571 NUMBER 1

MOTION: Holden - move BCI

NAME	AYE	NO
SUE BARTLETT		✓
AL BISHOP	✓	
STEVE DOHERTY		✓
SHARON ESTRADA	✓	
MIKE HALLIGAN		✓
RIC HOLDEN	✓	
REINY JABS	✓	
WALT MC NUTT	✓	
LORENTS GROSFIELD, VICE CHAIRMAN	✓	
BRUCE CRIPPEN, CHAIRMAN	✓	
	7	3

SEN:1995
wp:rlclvote.man
CS-11

SENATE STANDING COMMITTEE REPORT

March 27, 1997

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill 571 (third reading copy -- blue), respectfully report that House Bill 571 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

671304SC.SRF

HOUSE BILL NO. 571

INTRODUCED BY BEAUDRY, MILLS, CLARK, HIBBARD, BITNEY, KOTTEL, DENNY, BERGMAN, ORR, MOOD, SLITER, MCGEE, GRIMES, ANDERSON, TASH, SMITH, KEATING, GROSFIELD, ESTRADA, MCNUTT, HOLDEN, BISHOP, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE EFFECT OF A RELEASE OR COVENANT NOT TO SUE; REVISING THE PRINCIPLES GOVERNING LIABILITY AND THE DETERMINATION OF LIABILITY WHEN MULTIPLE PERSONS ARE AT FAULT; AMENDING SECTIONS 27-1-702 AND 27-1-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

WHEREAS, the Montana Supreme Court, in Plumb v. District Court, 927 P.2d 1011, 53 St. Rep. 1187 (1996), recently declared unconstitutional portions of Montana's comparative negligence statute because it failed to provide an opportunity for a nonparty to defend oneself, and it required the plaintiff to act in a dual capacity by requiring that the plaintiff represent nonparties; and

WHEREAS, the Montana Supreme Court also recognized in Plumb that parties who settle represent the single exception for fair apportionment of liability under third-party practice rules; and

WHEREAS, the Montana Supreme Court has recognized that the Legislature may alter tort causes of action to promote legitimate state interests; and

WHEREAS, the Legislature believes that the policy of the state is that claimants, defendants, and other potentially liable persons should be held responsible to the extent of individual fault; and

WHEREAS, the Legislature has retained joint and several liability, but modified it because of that policy; and

WHEREAS, the current system of modified joint and several liability must permit a consideration of the fault attributable to parties who settle or are released for the modified system to be operative; and

WHEREAS, the Legislature believes that a claimant who enters into a settlement or covenant not to sue does so because the claimant has made a considered judgment that the agreement is in the claimant's best interests; and

WHEREAS, the Legislature intends that the liability of persons who settle or are released and who may share in the responsibility for a tort cause of action be considered by the trier of fact and apportioned a percentage of damages according to their negligence; and

WHEREAS, the Legislature believes that the percent credit rule, rather than the dollar credit rule, more accurately reflects the basis for comparative negligence, which apportions liability according to the percentage of individual negligence.

THEREFORE, the Legislature finds it appropriate to pass legislation addressing the concerns raised by the Montana Supreme Court and to accomplish the Legislature's objectives of allocating liability on the basis of individual negligence, encouraging fair settlements that accurately reflect potential liability, and permitting the allocation of a percentage of liability to persons who settle or are released and are found to be partially or wholly responsible.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Release -- covenant not to sue.** A release or covenant not to sue given to one of two or more persons liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides otherwise;

(2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of fault attributed by the trier of fact under 27-1-703(6) to the tortfeasor to whom the release or covenant is given;

(3) discharges the tortfeasor to whom it is given from all liability for contribution.

Section 2. Section 27-1-702, MCA, is amended to read:

"**27-1-702. Comparative negligence -- extent to which contributory negligence bars recovery in action for damages.** Contributory negligence ~~shall~~ does not bar recovery in an action by ~~any~~ a person or ~~his~~ the person's legal representative to recover damages for negligence resulting in death or injury to the person or property if ~~such~~ the contributory negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed ~~shall~~ must be diminished in the proportion to the ~~amount~~ percentage of negligence attributable to the person recovering."

Section 3. Section 27-1-703, MCA, is amended to read:

"**27-1-703. Multiple defendants -- determination of liability.** (1) Except as provided in subsections (2) and (3), ~~whenever~~ if the negligence of a party ~~in any~~ to an action is an issue, each party against whom recovery may be allowed is jointly and severally liable for the amount that may be awarded to the claimant but has the right of contribution from any other person whose negligence may have contributed as a proximate cause to the injury complained of.

(2) A party whose negligence is determined to be 50% or less of the combined negligence of all persons described in subsection (4) is severally liable only and is responsible only for the ~~amount~~ percentage of negligence attributable to that party, except as provided in subsection (3). The remaining parties are jointly and severally liable for the total less the ~~amount~~ percentage attributable to the claimant and to any person with whom the claimant has settled or who the plaintiff has released from liability.

(3) A party may be jointly liable for all damages caused by the negligence of another if both acted in concert in contributing to the claimant's damages or if one party acted as an agent of the other.

(4) On motion of ~~any~~ a party against whom a claim is asserted for negligence resulting in death or injury to person or property, any other person whose negligence may have contributed as a proximate cause to the injury complained of may be joined as an additional party to the action. For purposes of determining the percentage of liability attributable to each party whose action contributed to the injury complained of, the trier of fact shall consider the negligence of the claimant, injured person, defendants, and third-party defendants. The liability of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to~~ and persons with whom the claimant~~,~~ has settled must also be considered by the trier of fact, as provided in subsection (6). The trier of fact shall apportion the percentage of negligence of all persons listed in this subsection. ~~Contribution must be proportional to the liability of the parties against whom recovery is allowed.~~ Nothing contained in this section makes any party indispensable pursuant to Rule 19, Montana Rules of Civil Procedure.

(5) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties shall contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party. A party found to be 50% or less negligent for the injury complained of is liable for contribution under this section only up to the percentage of negligence attributed to that party.

(6) (a) In an action based on negligence, a defendant may assert as a defense that the damages

of the claimant were caused in full or in part by a ~~nonparty, which may be referred to as a nonparty defense~~ person with whom the claimant has settled or who the claimant has released from liability.

(b) In determining the percentage of liability attributable to persons who are parties to the action, the trier of fact shall consider the negligence of ~~nonparties, including~~ persons released from liability by the claimant ~~and persons immune from liability to the claimant, if a nonparty defense is properly asserted in accordance with this subsection (6)~~ or with whom the claimant has settled. A finding of negligence of a ~~nonparty~~ person with whom the claimant has settled or who has been released from liability by the claimant is not a presumptive or conclusive finding as to that ~~nonparty~~ person for purposes of a prior or subsequent action involving that ~~nonparty~~ person.

(c) Except for persons who have settled with or have been released by the claimant, comparison of fault with any of the following persons is prohibited:

(i) a person who is immune from liability to the claimant;

(ii) a person who is not subject to the jurisdiction of the court; or

(iii) any other person who could have been, but was not, named as a third party.

(d) A release of settlement entered into by a claimant constitutes an assumption of the liability, if any, allocated to the settled or released person. The claim of the releasing or settling claimant against other persons is reduced by the percentage of the released or settled person's equitable share of the obligation, as determined under subsection (4).

~~(c)~~(e) ~~The burden of proof as to a nonparty's liability is on the defendant or defendants who affirmatively plead the nonparty defense, but this subsection (6) does not relieve the claimant of the burden of proving that negligence on the part of the defendant or defendants contributed as a proximate cause to the injury of the claimant or alter other proof requirements.~~ A defendant who alleges that a person released by the claimant or with whom the claimant has settled is at fault in the matter has the burden of proving:

(i) the negligence of the person who the claimant has released or with whom the claimant has settled;

(ii) any standard of care applicable to the person who the claimant released or with whom the claimant settled; and

(iii) that the negligence of the person whom the claimant has released or with whom the claimant has settled was a contributing cause under the law applicable to the matter.

~~(d)~~(f) A ~~nonparty defense must be~~ defendant alleging that a settled or released person is at fault

in the matter shall affirmatively ~~pleaded as a part of~~ plead the settlement or release as a defense in the answer. A defendant who gains actual knowledge of a ~~nonparty defense~~ settled or released person after the filing of that defendant's answer may plead the defense of settlement or release with reasonable promptness, as determined by the trial court, in a manner that is consistent with:

(i) giving the defendant a reasonable opportunity to discover the existence of a ~~nonparty defense~~ settled or released person;

(ii) giving the settled or released person an opportunity to intervene in the action to defend against claims affirmatively asserted, including the opportunity to be represented by an attorney, present a defense, participate in discovery, cross-examine witnesses, and appear as a witness of either party; and

~~(ii)~~(iii) giving the claimant a reasonable opportunity to defend against ~~a nonparty~~ the defense~~; and~~

~~(iii) giving the claimant a reasonable opportunity, if appropriate, to add the nonparty as an additional defendant to the action before the expiration of the period of limitation applicable to the claim. However, this subsection (iii) does not extend the period of limitation or revive the action if the period of limitation has expired~~.

~~(c)~~(g) If a defendant ~~asserts a nonparty defense~~ alleges that a settled or released person is at fault in the matter, the defendant shall notify each ~~nonparty~~ person who the defendant alleges caused the claimant's injuries, in whole or in part. Notification must be made by mailing the defendant's answer to each ~~nonparty~~ settled or released person at the ~~nonparty's~~ person's last-known address by certified mail, return receipt requested."

NEW SECTION. **Section 4. Applicability.** [This act] applies to causes of action that arise on or after [the effective date of this act].

NEW SECTION. **Section 5. Nonseverability.** It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-END-